SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 503.

THE UNITED STATES, PETITIONER,

vs.

ALBERT LORSCH & COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

INDEX.

	Original.	Print.
Caption	a	1
Petition	1	1
Mandate	3	3
Bond	3	3
Return of the board	3	3
Protest 723676/35109	4	3
Report of the collector	7	5
Stipulation of fact	7	5
Decision of the board	8	6
Certificate of the Attorney General	10	7
Order of argument	11	7
Judgment	12	8
Memorandum as to opinion	14	10
Clerk's certificate	15	10
Writ of certiorari and return	16	10

a 1440

United States Court of Customs Appeals.

ALBERT LORSCH & CO. ET AL., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 1440.

Transcript of record on appeal from the Board of United States General Appraisers.

McLaughlin, Russell, Coe & Sprague, attorneys for appellants.
Printed under the direction of the clerk.
Press of Byron S. Adams, Washington, D. C.

1 *Petition.*

United States Court of Customs Appeals.

ALBERT LORSCH & CO. ET AL., APPELLANTS,
vs.
UNITED STATES OF AMERICA, APPELLEE. } No. 1440.

To the honorable the United States Court of Customs Appeals:

Your petitioners, Albert Lorsch & Co. et al., being dissatisfied with the decisions made on August 7, 1914, by the Board of United States General Appraisers as to the construction of the law and facts respecting the allowance of a discount of five per centum upon the duties paid upon the merchandise imported at the port of New York by the said Albert Lorsch & Co. et al., and covered by the following protests and entries:

Protest.	Importer.	Entry.
728626	A. Lorsch & Co.	275539
733435	Henry Glass & Co.	315953
736757	F. L. Kraemer & Co.	282144
740000	L. D. Bloch & Co.	303963
740315	A. Leipzig, Inc.	293803
740649	A. J. Dale	290730

respectfully make application to this court for a review of the questions of law and fact involved in such decisions and set forth the following statement of errors of law and facts complained of:

Errors of law.

The Board of U. S. General Appraisers erred—

1. In overruling appellants' protests.
2. In not sustaining appellants' protests.
3. In following the board's decision in G. A. 7540—T. D. 34246.
4. In not holding that the merchandise covered by each of appellants' protest is entitled to a discount of 5% on the duties imposed by virtue of treaties between the United States and the countries under whose laws the vessels named in said protests are registered.

2

5. In not holding that the merchandise covered by each of appellants' protests is entitled to a discount of 5% on the duties imposed by virtue of Section IV, paragraph J, subsection 7 of the tariff act of 1913.

6. In not holding that the refusal to allow said discount of 5% is contrary to the terms of treaties between the United States and the following countries: France, Germany, Japan, Austro-Hungary, Italy, and Great Britain.

7. In not holding that the refusal to allow said discount of 5% is contrary to the provisions of paragraph J, subsection 7 of the tariff act of 1913.

8. In not holding that no other or higher duties can legally be levied on the merchandise covered by this appeal than are provided in the schedules of the tariff act in conjunction with Section IV, paragraph J, subsection 7 of said act, in the case of similar merchandise imported on vessels admitted to registration under the laws of the United States.

9. In not directing the collector of the port to refund to appellants 5% of the duties exacted on the merchandise covered by this appeal.

Errors of fact.

The Board of U. S. General Appraisers erred—

1. In not holding that the collector of the port of New York assessed other or higher duties or charges levied in the name of and to the profit of the United States Government on the merchandise imported in the vessels named in the protests and registered under the laws of the countries named in said protests than is provided for by the schedules of the United States tariff act of 1913 and Section IV, paragraph J, subsection 7 of said act, in the case of similar merchandise imported in vessels of the United States.

2. In not holding that said excess amounts to 5% of the duties exacted.

3 Accordingly, your petitioner respectfully prays that this court order the said Board of United States General Appraisers to return to this court the record and evidence taken by the said board, together with a certified statement of the facts involved in the case and their decision thereon, and thereupon to review said decision and to hear and determine the questions of law and fact involved in the same.

A. Lorsch & Co.,
Henry Glass & Co.,
F. L. Kraemer & Co.,
L. D. Bloch & Co.,
A. Leipzig (Inc.),
A. J. Dale,
By McLaughlin, Russell, Coe & Sprague,
165 Broadway, New York City.

Dated August 21, 1914.

Endorsed: United States Court of Customs Appeals. Filed Aug. 24, 1914. Arthur B. Shelton, clerk.

Mandate.

Mandate issued August 24, 1914.

ARTHUR B. SHELTON, *Clerk.*

Bond.

Bond of Sidney Mandell, in the sum of twenty-five dollars, approved by O. M. Barber, associate judge. Filed Aug. 24, 1914.

Return of the board.

Board of United States General Appraisers.

ALBERT LORSCH & CO. ET AL., APPELLANTS,
v.
THE UNITED STATES, APPELLEE. } No. 1440.

The petitioner above named, having applied to the United States Court of Customs Appeals for a review of the questions of law and fact involved in a decision of the Board of United States General Appraisers in the above case, and the said court having
4 ordered the board to transmit to said court the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

Now, therefore, pursuant to said order, the Board of United States General Appraisers does hereby transmit to said court the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case, and also its decision thereon.

This return specifically comprises the following:

1. Protest 728676/35109 with the report of the collector of customs thereon;

2. The other protests covered by the petition, with the reports thereon, enclosed herewith in a separate envelope;

3. The stipulation upon which the protests were submitted;

4. A copy of the board's decision in question, Abstract 36281 (T. D. 34704).

Witness the Honorable Jerry B. Sullivan, president of the board, this eighth day of September, A. D. 1914.

[SEAL.]

O. D. MADGE, *Chief Clerk.*
G. V. O.

Five per cent discount.

Protest 728676/35109.

NEW YORK, *Dec. 10, 1913.*

Hon. COLLECTOR OF CUSTOMS,
Port of New York.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties, and your decision assessing duty under the tariff act of October 3,

1913, on the merchandise covered by the entries below named. Said merchandise is not dutiable as assessed. In respect to each of said entries we claim as follows: That the duties assessed on said merchandise are subject to a discount of 5% for the reason specified below.

We hereby give notice that this protest is intended to apply to all of the merchandise, articles and payments included in or
5 incident to the importations herein specified. The above claims are made under or by virtue of the tariff act of Oct. 3, 1913.

We further claim, under section 4, paragraph J, subsection 7 of the tariff act of 1913, a discount of 5% on all duties imposed by this act upon all merchandise covered by the entries herein specified, imported in vessels admitted to registration under the laws of the United States or imported in vessels as specified below, by virtue of treaties as specified below, or any subsequent treaty terminating or modifying any of said treaties.

We claim further that the duty on each and every item of merchandise covered by said entries is entitled to said 5% discount, both by virtue of said section 4, paragraph J, subsection 7, and by virtue of a treaty or treaties made between the United States and the country of exportation, or between the United States and the country where part or all of said merchandise was produced, or between the United States and the country under whose flag the vessel conveying said merchandise sails, or by either said section or said treaty or treaties.

We claim further that the duty on each and every item of merchandise covered by the entries herein specified is entitled to said discount of 5% by virtue of the fact that a discount of 5% is allowed or has been granted in the case of merchandise imported in a vessel of the registration of the United States, or has been allowed in the case of merchandise the growth, production, or exportation of other countries or shipped in the vessels of other countries.

The excess is paid under compulsion to obtain and retain possession of said merchandise or articles, and the demand for the repayment thereof and a readjustment or liquidation of the entries in accordance with the claims is hereby made.

The marks and numbers below enumerated are subject to errors of omissions or otherwise and are given without prejudice.

6 Entry No. 275539. Date of entry, 10/6/13. Liquidated, 11/11/13. Vessel, LaLorraine. How registered, French. Treaty, France, 1778, 1800, 1822, 1898, 1902, 1908, and other treaties, etc., specified below. Marks and number, A. L. Co. 3446 and various as per invoices and entries.

Treaties.

Algiers, 1815, 1816; Argentine Republic, 1853; Austria-Hungary, 1829; Belgium, 1845, 1858, 1863, 1875; Bolivia, 1858; Borneo, 1850; Brazil, 1828; Bulgaria, 1906; Chile, 1832, 1833; China, 1844, 1858,

1880, 1903; Colombia, 1824, 1846; Congo (Kongo), 1891; Corea (Korea), 1882; Costa Rica, 1851; Canada, 1911; Cuba, 1902; Denmark, 1826; Dominican Republic, 1867; Ecuador, 1839; Egypt, 1884; Ethiopia, 1903; France, 1778, 1800, 1822, 1898, 1902, 1908; German Empire, 1871, 1900, 1906, 1907; Great Britain 1794, 1815, 1827, 1902; Greece, 1837; Hanover, 1840, 1846, 1861; Hanseatic Republics, 1827; Hayti, 1864; Honduras, 1864; Italy, 1871, 1900, 1909; Japan, 1854, 1857, 1858, 1864, 1866, 1878, 1894, 1911; Liberia, 1862; Madagascar, 1867, 1881; Mecklenberg-Schwerin, 1847; Mexico, 1831, 1883, 1885, 1886; Morocco, 1787, 1836; Muscat, 1833; Netherlands, 1782, 1839, 1852, 1907; Nicaragua, 1867; Oldenberg, 1847; Orange Free State, 1871; Ottoman Empire, 1830, 1862; Paraguay, 1859; Persia, 1856; Peru-Bolivia, 1836; Peru, 1851, 1870, 1887; Portugal, 1840, 1899, 1902; Prussia, 1785, 1799, 1828; Russia, 1832; Salvador, 1850, 1870, 1873; Samoan Islands, 1878, 1889; Sardinia, 1858; Servia, 1881; Siam, 1836, 1856; Spain, 1795, 1884, 1888, 1906, 1909; Sweden, 1783; Sweden and Norway, 1816, 1827; Switzerland, 1850, 1906; Tonga, 1886; Tripoli, 1796, 1805; Tunis, 1797, 1824; Two Sicilies, 1845, 1855; Venezuela, 1836, 1860; Zanzibar, 1886; and all favored nation or reciprocal agreements, treaties, conventions, and proclamations by the United States or between the United States and either of the nations specified above or any other nations.

7 A. LORSCH & Co.,
By THADDEUS S. SHARRETTS,
Office and P. O. Address, 165 Broadway, New York City.
McLAUGHLIN, RUSSELL, COE & SPRAGUE.

Endorsed: Custom house, New York. Received Dec. 11, 1913.

Report of the collector.

JAN. 15, 1914.

Respectfully referred to the Board of U. S. General Appraisers for decision.

Duty was assessed in accordance with the appraiser's return on the invoice at the appropriate rate applicable under the provisions of the act of October 3, 1913, without any discount being allowed or deduction made on account of the vessel's registry. Note T. D. 33847.

The protest was lodged and fee paid within the statutory time.

DUDLEY FIELD MALONE,
Collector.

Stipulation.

Board of United States General Appraisers. Board Number Three.

In the matter of protests 728676, etc., of A. Lorsch & Co. et al.

It is hereby stipulated by and between the parties hereto:

1. That the merchandise covered by the protests enumerated on the schedule hereto appended was imported subsequent to October 3, 1913.

2. That the said merchandise was imported in the various vessels as named in the schedule hereto appended and identified by the respective protest and entry numbers.

3. That the said vessels are, and were at the time of shipment of the said merchandise, registered under the laws of the respective nations mentioned in the said schedule.

8 4. That each of the protests enumerated in the said schedule shall be deemed to be submitted on this stipulation.

Dated Jun. 13, 1914.

BERT HANSON,
Assistant Attorney General, for the United States.
MCLAUGHLIN, RUSSELL, COE & SPRAGUE,
For the Importers.

R. K. HILLIS.

Schedule.

Protest.	Importers.	Vessel.	Entry.	Date of entry.
728676	A. Lorsch & Co	La Lorraine The steamer La Lorraine is registered under the laws of France.	275339	10- 6-13
736737	Kraemer & Co	Pr. Lincoln The steamer President Lincoln is registered under the laws of the German Empire.	282144	10-10-13
740315	A. Leipzig (Inc.)	Tamba Maru The steamer Tamba Maru is registered under the laws of Japan.	293803	10-22-13
740649	A. J. Dale	Argentina The steamer Argentina is registered under the laws of Austro-Hungary.	290730	10-18-13
740000	L. D. Bloch	Prin. de Piemonte The steamer Principe de Piemonte is registered under the laws of Italy.	303963	10-28-13
733435	H. Glass & Co	Caronia The steamer Caronia is registered under the laws of the British Empire.	315953	11-13-13

Decision of the board.

Board of United States General Appraisers, New York, August 7, 1914. In the matter of protests 728676/35109, etc., of A. Lorsch & Co. et al. against the assessment of duty by the collector of customs at the port of New York. Before Board 3.

9 WAITE, General Appraiser: The claims in these protests relating to the classification of the merchandise have been abandoned, leaving for consideration only the question of 5 per cent discount arising under subsection 7 of paragraph J, section 4, tariff act of 1913. Following the board's decision on that subject, G. A. 7540 (T. D. 34246), we overrule the protests.

BYRON S. WAITE,
EUGENE G. HAY,
Board of U. S. General Appraisers.

Protest.	Importer.
728676/35109	A. Lorsch & Co.
733435/4567	Henry Glass & Co.
736757/10607	F. L. Kraemer & Co.
740000/16593	L. D. Bloch & Co.
740315/14803	A. Leipzig, Inc.
740649/15094	A. J. Dale.

(Endorsed:) United States Court of Customs Appeals. Filed Sep. 9, 1914. Arthur B. Shelton, clerk.

10 United States Court of Customs Appeals.

ALBERT LORSCH & CO. ET AL.,
v.
THE UNITED STATES. } No. 1440.

Certificate of the Attorney General.

In pursuance of the act entitled "An Act to amend section 195 of the act entitled 'An act to codify, revise and amend the laws relating to the judiciary, approved March 3, 1911,'" approved August 22, 1914, I, Thomas Watt Gregory, Attorney General of the United States, do certify that the case now pending and undecided in the Court of Customs Appeals entitled, "No. 1440, Albert Lorsch & Co., et al., v. The United States," is of such importance as to render expedient its review by the Supreme Court.

Given under my hand this 29th day of Sept., 1914.

T. W. GREGORY,
Attorney General.

Filed October 2, 1914. United States Court of Customs Appeals. Arthur B. Shelton, clerk.

11 United States Court of Customs Appeals.

A. LORSCH & CO., HENRY GLASS & CO., F. L KRAEMER, & Co., L. D. Bloch & Co., A. Leipzig (Inc.), A. J. Dale, appellants,
vs.
THE UNITED STATES, APPELLEE. } No. 1440.

The above-entitled appeal was argued by counsel and taken under advisement by the court on November 10, 11, and 12, 1914.

TUESDAY, *May 25, 1915.*

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 25th day of May, A. D. 1915.

Present, the Honorable Robert M. Montgomery, presiding judge, and the Honorables James F. Smith, Orion M. Barber, Marion De Vries, and George E. Martin, associate judges.

The court was opened for business in due form.

No. 1346.

The M. H. Pulaski Co., Johnson & Faulkner, John Pullman & Co., appellants,

v.

The United States, appellee.

No. 1353.

R. B. Henry Co., Wiener Brothers, Lehn & Fink, W. A. Taylor & Co., J. S. Plummer & Co., Mecke & Co., J. Wile Sons & Co., appellants,

v.

The United States, appellee.

No. 1355.

J. Elliott & Co., Samstag & Hilder Brothers, appellants,

v.

The United States, appellee.

No. 1364.

Robert Muller & Co., appellant,

v.

The United States, appellee.

No. 1370.

Wood & Selick, Louis Meyers & Son, appellants,

v.

The United States, appellee.

No. 1391.

The United States, appellant,

v.

J. Wile Sons & Co., appellee.

Said appeals having heretofore been brought on to be heard before the court and due consideration thereon having been had, it is ordered:

(1) That the merchandise involved in these cases, imported in the registered vessels of the United States, is entitled to the five per cent discount as held by the Board of United States General Appraisers, whose decision relating thereto is hereby affirmed.

(2) That as to the merchandise imported in the registered vessels of the said treaty nations, both that which was imported and entered for consumption subsequent to the taking effect of the tariff act of 1913, as well as that which was brought to our ports prior thereto and entered in bond for warehousing, subsequently withdrawn for consumption and duties paid, the five per cent discount must be allowed, and with respect to such merchandise the decision of said board is hereby reversed.

(3) That the merchandise imported in vessels of our registry before the tariff act of 1913 took effect which was entered in bond for warehousing, subsequently withdrawn and entered for consumption and duties paid, is en-

13 No. 1392.

The United States, appellant,
v.
G. W. Faber (Inc.), appellee.

No. 1393.

The United States, appellant,
v.
Louis Meyers & Son, appellee.

No. 1394.

The United States, appellant,
v.
William Openhym & Sons, A. Wimpfheimer & Bro., appellees.

No. 1395.

The United States, appellant,
v.
Park & Tilford, appellees.

No. 1396.

The United States, appellant,
v.
Selgas & Co., appellee.

No. 1399.

E. La Montagne's Sons, appellants,
v.
The United States, appellee.

No. 1410.

Cullman Brothers, E. Rosenwald & Bro., appellants,
v.
The United States, appellee.

No. 1440.

A. Lorsch & Co., Henry Glass & Co., F. L. Kraemer & Co., L. D. Block & Co., A. Leipzig (Inc.), A. J. Dale, appellants,
v.
The United States, appellee.

titled to the five per cent discount thereon, and the decision of said board with respect thereto is reversed.

(4) That the merchandise from Cuba is entitled to the reduction of twenty per centum ad valorem provided by the Cuban treaty, and the further discount of five per centum ad valorem from the amount so ascertained. As to such importations the decision of said board is hereby affirmed.

And said appeals are remanded to said board for proper action in the premises.

De Vries, associate judge, dissents.

* * * * * * * *

(Signed) ROBERT M. MONTGOMERY,
Presiding Judge.

14 United States Court of Customs Appeals.

A. LORSCH & Co., HENRY GLASS & Co., F. L. KRAEMER & Co., L. D. Bloch & Co., A. Leipzig (Inc.), A. J. Dale, appellants,
vs.
THE UNITED STATES, APPELLEE.
No. 1440.

For the opinion of the court in the above-entitled appeal see transcript of record in the case of R. B. Henry Co. et al., appellants, vs. The United States, appellee, No. 1353.

15 United States Court of Customs Appeals.

A. LORSCH & Co., HENRY GLASS & Co., F. L. KRAEMER & Co., L. D. Bloch & Co., A. Leipzig (Inc.), A. J. Dale, appellants,
vs.
THE UNITED STATES, APPELLEE.
No. 1440.

I, Arthur B. Shelton, clerk of the United States Court of Customs Appeals, do hereby certify that the attached pages contain a true and complete transcript of the record and proceedings had in said court in the above-entitled appeal as the same remain of record and on file in this office.

Witness my hand and the seal of this court this 11th day of June, A. D. 1915.

[SEAL.] ARTHUR B. SHELTON, *Clerk.*

16 United States of America, ss.

The President of the United States of America to the honorable the Judges of the United States Court of Customs Appeals, greeting:

Being informed that there is now pending before you a suit in which Albert Lorsch & Company et al. are appellants and The United States is appellee, No. 1440, which suit was removed into the said Court of Customs Appeals by virtue of an appeal from the Board of United States General Appraisers, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Customs Appeals and removed into the Supreme Court of the United States,
17 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of June, in the year of our Lord one thousand nine hundred and fifteen.

[SEAL.]

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

(Indorsed:) File No. 24,784. Supreme Court of the United States, No. 1040, October term, 1914. The United States vs. Albert Lorsch & Company et al. Writ of certiorari.

18 In the Supreme Court of the United States, October term, 1914.

THE UNITED STATES, PETITIONER,
v.
ALBERT LORSCH & COMPANY ET AL. } No. 1040.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record on file in the Supreme Court shall constitute the return of the clerk of the Court of Customs Appeals to the writ of certiorari issued herein.

JNO. W. DAVIS,
Solicitor General.
RUFUS W. SPRAGUE, JR.,
Counsel for Respondents.

June 25, 1915.

Filed June 25, 1915. United States Court of Customs Appeals. Arthur B. Shelton, clerk.

19

Return to writ.

United States Court of Customs Appeals.

In obedience to the command of the within writ of certiorari, and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of A. Lorsch & Co. et al. v. The United States, No. 1440, is a full, true, and complete transcript of the record and proceedings in said appeal.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Court of Customs Appeals this twenty-sixth day of June, A. D. 1915.

[SEAL.]

ARTHUR B. SHELTON,
Clerk of the United States Court of Customs Appeals.

(Indorsed:) File No. 24,784. Supreme Court U. S., October term, 1915. Term No. 503. The United States, petitioner, vs. Albert Lorsch & Company et al. Writ of certiorari and return. Filed June 29, 1915.

(Indorsement on cover:) File No. 24,784. U. S. Court of Customs Appeals. Term No. 503. The United States, petitioner, vs. Albert Lorsch & Company et al. Petition for writ of certiorari and exhibit thereto and waiver of notice of submission. Filed June 12, 1915. File No. 24,784.

O